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14 LOCAL LODGE 289

15 **UNITED STATES BANKRUPTCY COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **SAN FRANCISCO DIVISION**

18 In Re

19 INTERNATIONAL LONGSHORE AND  
20 WAREHOUSE UNION,

21 Debtor.

22 Case No. 23-30662-HLB

23 Chapter 11

24 **OPPOSITION TO EX PARTE APPLICATION  
25 TO RELIEF FROM MOTION FOR STAY**

26 International Association of Machinists and Aerospace Workers, District Lodge 160,  
27 Local Lodge 289 (IAM), opposes the Debtor International Longshore and Warehouse Union's  
28 ("Debtor" or "ILWU") ex parte application for entry of an order providing the automatic stay  
does not apply to the pending appeal before the Ninth Circuit. The exception to the automatic  
stay for the government's exercise and enforcement of its regulatory powers does not apply to  
prosecution of appeals by private parties in an effort to overturn government actions. Permitting  
the Debtor to continue prosecuting the Ninth Circuit litigation it initiated would require  
substantial expenditure of resources, create financial exposure for the Debtor, and risk improper  
activities including the same unlawful conduct that precipitated this bankruptcy in the first place.

1 The Ninth Circuit's stay of the litigation does not prejudice the Debtor and should remain in  
2 place. Accordingly, IAM brings this opposition to the Debtors' application.

3 1. IAM is a party to the Ninth Circuit litigation from which the Debtor seeks relief  
4 from the automatic stay. The IAM opposes the Debtor's application for an order providing the  
5 stay does not apply to the pending appeal for the reasons explained below.

6 2. The Ninth Circuit action consists of four separate matters. First there is the  
7 Petition for Review filed by the ILWU in the Ninth Circuit, Case 23-632. Second, a Petition for  
8 Review filed by the Employer Association, The Pacific Maritime Association, Case 23-658.  
9 Third a Petition for Review filed by the IAM, Case 23-793. That Petition for Review was  
10 initially filed in the D.C. Circuit but was consolidated by a Consolidation Order from the Judicial  
11 Panel on Multidistrict Litigation with the other cases in the Ninth Circuit. Fourth, there is a  
12 Cross-Application for enforcement filed by the National Labor Relations Board in Case 23-632  
13 which cross-application was docketed at 23-780. These cases have all been consolidated by the  
14 Ninth Circuit.

15 3. The Court stayed the briefing schedule, which was set to begin in December,  
16 because it received notification of the pendency of the bankruptcy filing. See Exhibit to  
17 Declaration of Eleanor Morton.

18 4. The briefing in this case will be extremely complicated because of the scope of the  
19 issues raised. The Pacific Maritime Association, the ILWU and the Machinists Union each has a  
20 Petition for Review. Each will raise various issues.

21 5. The IAM will be raising issues of remedy, seeking additional remedies including  
22 monetary remedies to be imposed upon the ILWU. Monetary remedies will only be addressed  
23 later by the Board on remand if the Ninth Circuit orders a remand on the remedial issue.

24 6. At stake in the Board's order is an order that the ILWU rescind certain grievances  
25 filed against the employer involved, SSA Terminals. The dispute involves work at Terminal 5 in  
26 Seattle. The ILWU filed grievances which the Board has ordered the ILWU to rescind. The  
27 Board ordered the ILWU to rescind those grievances and directed that the ILWU could not bring  
28 additional grievances which grievances against SSA.

1           7.       The IAM membership had been performing the work at Terminal 5 since the fall  
2 of 2020. SSA Terminals the employer involved is fully satisfied with the members of the IAM  
3 performing work at Terminal 5 and expressed a preference to use the IAM mechanics. The Board  
4 expressly found that SSA Terminals wishes to use the IAM members at Terminal 5.

5           8.       The ILWU seeks to be able by coercive tactics to force SSA Terminals to fire the  
6 IAM represented mechanics and to hire ILWU represented mechanics. Contrary to the  
7 representation of the ILWU, its workforce has grown substantially, and its efforts constituted  
8 work acquisition, not work preservation.

9           9.       Contrary to the assertions of the ILWU, its workforce was fully employed during  
10 this litigation. These issues are before the Ninth Circuit.

11          10.       The ILWU represents in this Motion that if it wins before the Ninth Circuit its  
12 members will begin performing that work. There is no certainty and nothing in the record  
13 suggests that SSA Terminals would decide to terminate and fire all machinist members who are  
14 performing this work and hire inexperienced and more expensive ILWU personnel.

15          11.       The ILWU filed this bankruptcy claiming that it could not afford the attorneys'  
16 fees in defending from its unlawful conduct in the ICTSI litigation. The same kind of unlawful  
17 conduct is involved in the Ninth Circuit case, namely jurisdictional disputes and failure to comply  
18 with Board Orders resolving those jurisdictional disputes. This Court should not allow the  
19 Debtor to waste further substantial resources in this proposed Subchapter V Plan to continue the  
20 same kind of illegal conduct which created the bankruptcy to begin with.

21          12.       As noted above, the ILWU is continuing to commit the same violations which  
22 caused the bankruptcy. Admittedly there has been no strike or picketing yet but the ILWU has  
23 not promised that it will not picket or strike in support of its jurisdictional demands. Moreover,  
24 fundamentally the ILWU continues the same course of illegal conduct. This Court should not  
25 grant a stay because it needs to consider whether to grant relief under Subchapter V depending  
26 upon whether there is any likelihood of ILWU continued unlawful conduct and whether the  
27 Subchapter V Plan otherwise meets legal obligations.

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1           13.     The ILWU engaged in coercive tactics during the recent roughly 14-month hiatus  
2 between the last expired contract on June 30, 2022 and the recently ratified new agreement.  
3 During that period, it engaged in multiple work stoppages, slowdowns and other illegal tactics,  
4 some of which led to loss of work by IAM represented employees.

5           14.     Potentially SSA Terminals the employer involved and potentially the members of  
6 the IAM will have damage claims if the ILWU continues in this grievance processing or IAM  
7 members lose work or where SSA suffers any work stoppages or other interference with its  
8 operations at Terminal 5 the major terminal in the Port of Seattle.

9           15.     Although we recognize that as the ILWU points out, the Courts have generally not  
10 stayed cases in Courts of Appeals where the National Labor Relations Board has sought  
11 enforcement of Board Orders, those cases do not address the question of whether that exception  
12 from the stay is appropriate when private parties like the Debtor and others are seeking review of  
13 the Board Order to prevent enforcement. Here, as noted above, the ILWU is seeking review of  
14 the Board Order. The Pacific Maritime Association is seeking review of the Board Order. The  
15 Machinists Union is seeking review of the Board Order. In particular the Machinists Union is  
16 seeking a much broader remedy against the ILWU that provided for by the Board. The Cross-  
17 Petition for enforcement is directed only at the ILWU. See, generally, *NLRB v. Continental*  
18 *Hagen Corp.*, 632 F.2d 828, 831-32 (9th Cir. 1991).

19           16.     This is an important distinction because the statutory exception to the automatic  
20 stay for the government's exercise and enforcement of its regulatory powers does not apply to  
21 private parties in an effort to overturn governmental actions. 11 U.S.C. § 362(b)(4) provides an  
22 exception for "the commencement or continuation of an action or proceeding *by a governmental*  
23 *unit* to enforce such governmental unit's police or regulatory power." It does not provide for the  
24 commencement or continuation of an action by a private party seeking to vacate a government  
25 order. Similarly, 11 U.S.C. § 362(b)(5) provides an exception to the stay for "the *enforcement of*  
26 *a judgment* ... obtained in an action or proceeding by a governmental unit to enforce such  
27 governmental unit's police or regulatory power." It does not provide for the prosecution of  
28 appeals by private parties in an effort to prevent enforcement of an agency's order. Permitting the

1 ILWU to prosecute the appeal it initiated to challenge the Board's order would result in a  
2 substantial expenditure of resources not to further public policy and the government's ability to  
3 enforce its regulatory powers, but to circumvent the government's decision and enforcement of its  
4 regulatory powers. Allowing all parts of the consolidated litigation to move forward would also  
5 permit private parties like the IAM to seek to have the Court modify and substantially broaden the  
6 remedy against the Debtor. The language of the statute does not permit this, but instead requires  
7 such litigation to be stayed.

8 17. Permitting private parties to pursue appeals of government actions is also  
9 undesirable because it risks financial exposure. The ILWU would like to force the employer  
10 involved SSA Terminals to fire all of the IAM mechanics. The mechanics would then have a  
11 potential claim against the ILWU and/or the employer involved. The employer itself would incur  
12 very substantial expenses where the ILWU engage in picketing, strike or other efforts to force  
13 SSA to terminate the IAM mechanics who are performing the work at Terminal 5. There is  
14 potential civil monetary relief on all sides. The ILWU must believe that the IAM has monetary  
15 claims since it is listed as a creditor. A further coercive activity by the ILWU could lead to  
16 another action pursuant to 29 U.S.C. § 187, the same statute which is the basis of the ICTSI  
17 action.

18 18. A stay will not prejudice the ILWU. The Court has set a date in February 2024 for  
19 Plan confirmation. If the Plan is confirmed that the ILWU can raise this issue again. At most a  
20 stay will delay the briefing for several months. Under Ninth Circuit procedures, this is not likely  
21 to stay or to delay oral argument by much because the Ninth Circuit is now generally fairly  
22 promptly setting oral argument after the briefing is completed. Moreover, the financial statements  
23 do not such that the income of the ILWU will be affected materially by the outcome of his  
24 dispute.

25 19. The ILWU has not sought the position of the National Labor Relations Board or  
26 SSA Terminals. SSA Terminals is the directly affected employer. It has also not sought the  
27 position of the Pacific Maritime Association, the other party in the Ninth Circuit. It did represent  
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1 to this Court that it had sought the position of the IAM which is a party directly affected. It just  
2 summarily sought an ex parte order. This conduct should not be sanctioned by this Court.

3 20. This Court lacks the power to enter an order effectively overruling the Ninth  
4 Circuit's order staying the briefing. This request should be directed in the first instance to that  
5 Court.

6 21. The ILWU maintains that the Coast Longshore Division is a separate entity and  
7 has the authority to enforce the terms of the PCLCD. The Coast Longshore Division has not  
8 joined in this motion.

9 22. For the reasons suggested above, this Court should deny the request for relief from  
10 the automatic stay. The Ninth Circuit order staying the briefing schedule should remain in place  
11 until after the Court rules on the confirmation or hearing on whether to confirm the Subchapter S  
12 Plan. Alternatively, the Court should set this down for a full hearing.

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14  
15 Dated: November 9, 2023

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

*/s/ Jolene E. Kramer*

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23 Machinists  
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